



January 30, 2020

Representative Ott
Chair, Assembly Committee on Judiciary
Wisconsin State Capitol, Rm 317N
Madison, WI 53708

Dear Representative Ott and Committee members:

The Wisconsin Board for People with Developmental Disabilities (BPDD) supports AB 786, which will provide free online training to family and volunteer guardians about the role, responsibilities, and other important features of Wisconsin's guardianship law before they are appointed.

Nationally, there is growing interest among advocates and attorneys practicing in elder and special needs law to improve adult guardianship practices especially in light of new options that provide less restrictive alternatives to guardianship, the civil rights advancements of individuals with disabilities that have occurred over the past several decades, and concern over how and to what degree guardianships are imposed and rights are restored,¹ and recognition of the profound consequences appointment of a guardian may have for an individual². Guardian training is consistently identified and included as a policy recommendation.

Guardian training is critically needed to provide standardized information and a continually available reference to help ensure both the letter and spirit of Wisconsin's law are followed. Given the gravity that a judicial declaration of legal incompetency has for the individual, and the seriousness of the responsibility a guardian assumes, providing free training is a worthwhile investment to support the volunteers and family members willing to serve their ward³.

Family and volunteer guardians are not the only people who benefit from standardized, plain language training. Accurate information about guardianship and alternatives to guardianship benefits teachers, medical staff, aging and disability resource centers, direct service providers, attorneys who have expertise in different areas of Wisconsin law, and other professionals who may interact with guardians or their wards. Many legal professionals, service providers, and advocacy groups have observed interactions or decisions made by

¹ *Turning Rights into Reality: How guardianship and alternatives impact the autonomy of people with Intellectual and Developmental Disabilities*. June 2019 (https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf) *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for People with Disabilities*. National Council on Disability. March 2018.

(https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf). *Research and Recommendations on Restoration of Rights in Adult Guardianship*. American Bar Association. 2017.

(https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf)

² *What Do NCI Data Reveal About the Guardianship Status of People With IDD?* (April 2019) (https://www.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf)

³ Basic data on guardianships in Wisconsin is limited. There is no statewide data collection on guardianships, each county courthouse keeps its own records. From an August 2015 analysis of data reported to Wisconsin's Consolidated Court Automation Programs (CCAP), there are almost 34,000 people under guardianship in Wisconsin³, and more than \$690,000,000 in assets under the supervision of a guardian³. Wisconsin State Court data does track the number of guardianship petitions filed each year³, almost 6000 guardianship petitions were filed in 2016 alone; the median age at disposition was 40. The low average ages of the wards indicate that many people placed under guardianship are not older adults.

guardians and are unsure whether the guardian is overstepping the authority that has been assigned to them by the courts. These professionals are equally unfamiliar with what the roles and responsibilities of the guardian are (and are not). Standardized training helps everyone better recognize guardians who are supporting their wards appropriately or identify situations that warrant further questions.

For many people with disabilities⁴, the court appointed guardian is often also a family member, frequently a parent. Most family members who become a guardian of a person or estate under Wis. Stats. Ch 54 do not fully understand the what the guardian's role, responsibilities, and administrative duties are under Wisconsin law. Many families of children with disabilities are instructed to petition for guardianship by teachers, doctors, and other non-legal professionals. Parents routinely tell us that guardianship is presented as the only option and is portrayed as administrative process rather than a decision that has permanent legal ramifications for both the individual and families. Frequently, family guardians feel overwhelmed, unprepared, isolated, and unsupported.

Common misperceptions about guardianship that BPDD routinely hears about from people with I/DD, families, and service providers include:

- Assumption that guardianship gives the guardian power over all decisions connected to the ward, leading to the guardian overstepping the authority granted to them by the courts.
- Belief that a guardianship empowers the guardian to restrict their ward's activities or prevent "bad" choices
- Lack of understanding of long-term implications and consequences of guardianship, especially as it related to family future planning⁵.
- Misperception by family guardians that the role of a guardian/ward is not distinct and different than role of parent/child.
- Acting in contradiction to the spirit of Wisconsin's limited guardianship system⁶.
- Misperception on the part of health care, other professionals, and service agencies that the guardian makes all decisions (many are unaware that limited guardianships are an option).
- Assumptions by health care, professionals, and service agencies that facilitate and empower guardians to exceed their authority. Many are unaware that they can ask to see the letter of guardianship to confirm who the guardian is and what decision-making authority has been granted.
- Uncertainty from service providers about what recourse is available when a guardian is overstepping their authority, abusing their position, or clearly not exercising their authority in a way that places the

⁴ People with Intellectual and Developmental Disabilities (I/DD), people with physical disabilities, primary diagnosis of mental health, and older adults are populations disproportionately affected by guardianship. Frequently, guardianships are imposed upon people with I/DD individuals at a young age (as early as 17 years, 9 months) and are rarely revisited. Many people spend many decades—their entire lifespan—under guardianship.

⁵ This includes 1) families not understanding that the Courts decide who will succeed the current guardian, 2) especially in families where the ward is a person with a disability and the guardianship may remain unchanged for decades, examining changes in family dynamics that change the support network for the individual 3) determining when a family guardian is no longer capable of performing as guardian, etc.

⁶ Under Wisconsin's limited guardianship system, the ward retains certain rights, and the guardian of the person is required to 1) place the least possible restriction on the ward's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the ward into his or her community. 2) make diligent efforts to identify and honor the ward's preferences with respect to place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. 3) takes into account the ward's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity of the ward to develop decision-making skills, and the need of the ward for wider experience.

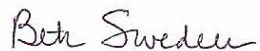
least possible restriction on their ward, maximizes community integration, and honors the ward's preferences.

The challenge of aging guardians is becoming an emerging issue. As the population ages, people with disabilities live longer, and families have become smaller and more geographically dispersed, it becomes more likely that someone will assume a guardian role unexpectedly or without preparation. Many families have not done future planning or find their plans have not sufficiently evolved over years (or decades) to reflect their current circumstances. Basic Guardian training that is always available can help families plan, and help prospective guardians who find themselves stepping into a new role sooner than anticipated.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities⁷.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,



Beth Swedeen, Executive Director
Wisconsin Board for People with Developmental Disabilities

⁷ More about BPDD https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf.